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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1155 OF 2007

The Commissioner of Income Tax ... Appellant

Versus

M/s. WMI Cranes Ltd. ... Respondent

Mr.A.D. Kango for the Appellant.

Mr.Nilesh Joshi i/by Dhru & Co. for Respondent. s

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: OCTOBER 09, 2007

P.C.

. The appeal is admitted on the following questions :

"(a) Whether on the facts and in the circumstances of the case in law, the Hon'ble Tribunal erred in confirming the order of the CIT(A) and directing the deletion of addition of Rs.62,84,720/- made on account of the under valuation of the closing stock by changing the method of accounting of the work in progress.

(b) Whether on the facts and circumstances

of the case and in law the Hon'ble Tribunal erred in confirming the order of the CIT (A) and directing the deletion of the addition of Rs.83,900/- incurred in connection with the issue of bonus shares.

(c) Whether on the facts and circumstances of the case and in law the Hon'ble Tribunal erred in confirming the order of the CIT (A) and deleting the disallowance of PF/ESIC made after the due date of payments but within the grace period allowed under the relevant statute."

. In so far as question (a) is concerned, the Commissioner (Appeals) has recorded a finding that there was a bona fide need for change of method of accounting. The material on record would support the said bona fide belief. The Commissioner (Appeals) recorded a finding that the change of Method has been followed in the subsequent years and the same was not disputed by the Assessing Officer. The Revenue being aggrieved by the allowance of the said expenditure preferred appeal before the tribunal. The Tribunal in Para 3 places reliance on the judgment of this court in the case of Melmould Corporation Vs. CIT, 2002 ITR 789. The tribunal did not dispute the finding recorded by the

Appellate Officer on the issue of bona fide belief as also that in the subsequent years the Assessing Officer had allowed the change in the method of accounting. In the light of the above, in our opinion the question of law as framed would not arise.

. Apart from that nothing has been brought to our notice in the matter of bona fide belief to take a view contrary to the view taken by the lower authorities.

. In so far as question (b) is concerned, our attention has been invited to the judgment of the Supreme Court by the counsel for the assess in the case of COI Vs. General Insurance Corporation, (2006) 286 ITR 232 (SC). The Apex Court also referred to the judgment of this court in Bombay Burmah Treading Corporation Ltd. Vs. CIT 1984 ITR 793. The Supreme Court made a distinction between increase of capital by issuing of new shares and issuacne of bonus shares. In respect of bonus shares, the court held that the expenditure incurred would be revenue expenditure and consequently would be allowable. Considering the judgment of the supreme court in our opinion, the second question as framed would not arise.

. In so far as the next question is concerned, the Commissioner (Appeals) recorded a finding in Para 22 of its order that the entire amount towards the Employers provident fund contribution and ESI contribution were paid within the grace period provided by relevant statutes and as such that payment can be said to be within the due date and in the light of that referred the matter back to the A.O.in the following terms :

> "The A.O. is directed to verify from the date of payment and if they are covered within the grace period of 5 days, the same should be allowed, following the above decision."

. The learned counsel for the assessee has invited our attention to the judgment of the Madras High Court in COI Vs. Salem Cooperative Spinning Mills Ltd. (2006) 284 ITR 621 (Mad) wherein the Madras High Court has taken a view that if the payment towards the Provident Fund and Employees Estate Insurance are paid within the grace time, allowed under the relevant Statute, then the payments can be said to be paid within due date. Reliance was then placed on the judgment in the case of COI Vs. Modi Spinning and Weaving Mills Co. Ltd. (2007) 292 ITR 479 where the Delhi High Court has taken a view that

in the case where the issue of delay in payment of provident fund and ESI dues but within grace period that question of law would not arise.

. This court in CIT Vs. Maharashtra State Seeds Corporation in Income Tax Application No. 14 of 2000 dated 25.11.2000 has also taken a view that if the amount paid within the grace period, then it would be said to be paid within the due date and amount will be allowed to be deducted as expenditure. Considering the above, the third question also would not arise. Consequently appeal dismissed.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**